

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**In re:**

**Juan Pablo Valdez**

**Debtor.**

**Case No. 24-12446-JDL  
Chapter 13**

**CREDITOR HUMBERTO TREJO'S RESPONSE AND BRIEF IN SUPPORT TO  
STAY ORDER PENDING DETERMINATION OF APPEAL**

**AN INTRODUCTION**

Pursuant to Bankruptcy Rules 7062 and 9014, Your Creditor Humberto Trejo Dominguez ("Trejo") requests this Court issue an Order allowing a limited stay to hold distributions to all creditors in abeyance until Trejo's appeal [**Doc. 49 & Doc. 50**] is resolved. Your Chapter 13 Trustee, John T. Hardeman ("Trustee") correctly shows irreparable harm would result if Your Trustee disbursed payments from Your Debtor, Juan Pablo Valdez ("Valdez") under the Amended Chapter 13 Plan [**Doc 31**]. Staying this Court's Order Confirming Valdez's Chapter 13 plan will prevent harm to prevailing and innocent creditors and the public. Therefore, this Court must enter an Order staying disbursements from Your Trustee related to Valdez's Chapter 13 Plan until Trejo's pending appeal is resolved. In support, Your Creditor shows this Court the following:

**BRIEF IN SUPPORT**

**A. A Factual Analysis & Procedural History**

The matter before this Court is contested. On January 29, 2025, this Court Confirmed Valdez's Amended Chapter 13 Plan over Trejo's objection [**Doc 47 & Doc 31**]. Trejo filed an appeal [**Doc. 49 & Doc. 50**]. The Bankruptcy Appellate Panel (BAP) set the appeal for mediation proceedings on February 21, 2025. Under the confirmed Chapter 13 Plan, your Trustee shall begin making monthly disbursements immediately. [**Doc 47 & Doc 31**]. Any appellate court is unable to resolve

the appeal before your Trustee must begin monthly disbursements. Valdez filed an application seeking to modify this Court's Order to pay additional attorney fees and costs through Valdez's Chapter 13 Plan on January 23, 2025. **[Doc 45]**. Your Trustee filed a motion for a limited stay on February 11, 2025 **[Doc 52]**.

### **B. Bankruptcy Rules Provide for a Limited Stay Here**

When a matter in bankruptcy court is contested, part seven of the Bankruptcy Rules, which typically only apply in adversary proceedings, allow this Court to exercise its discretion to grant discretionary stays. **Fed. R. Bankr. P. 9014**. Part seven of the Bankruptcy Rules provide for the application of the Federal Rules of Civil Procedure in contested matters in bankruptcy proceedings. Specifically, Rule 7062 provides for staying proceedings and orders consistent with the Federal Rules of Civil Procedure Rule 62. **Fed. R. Bankr. P. 7062; see also In re Porter**, 54 B.R. 81, at 82 (Bankr. N.D. Okla. 1984) The type of stay your Trustee and Trejo are asking this Court to consider is a discretionary stay. When considering a discretionary stay pursuant to Rule 62 pending appeal of bankruptcy matters, bankruptcy courts generally consider the following four factors: (1) likelihood of success on the merits (2) irreparable injury to moving party absent stay (3) substantial harm to other interested persons and (4) harm to the public. **Schwartz v. Covington**, 341 F.2d 537 (9<sup>th</sup> Cir. 1965); **Long v. Robinson**, 432 F.2d 977 (4<sup>th</sup> Cir. 1970).

### **C. Creditor's probability of success is a relaxed factor; Trustee's administrative burden constitutes sufficient cause for this Court to provide a limited stay pending appeal.**

A limited discretionary stay of Chapter 13 plan disbursements is warranted here because the administrative burden your Trustee will suffer if Trustee cannot hold disbursements in abeyance is rightly weighed as irreparable harm affecting the public and prevailing and innocent creditors.

The factors for a discretionary stay are based on the same factors used for preliminary injunctions. **See In re Porter**, 54 B.R. 81, at 82 (Bankr. N.D. Okla. 1984). The **Lang** Court, which decided to apply the factors for preliminary injunction to a discretionary stay of a bankruptcy appeal, relied heavily on a Supreme Court decision involving appeals for habeas corpus. **In re Lang**, 414 F.3d 1191, 1201 n. 29 (10<sup>th</sup> Cir. 2005) (citing **Hilton v. Braunskill**, 481 U.S. 770, 777, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)). In **Hilton**, the Supreme Court acknowledged that the factors for preliminary injunctions are not reduced to rigid rules. **See Hilton v. Braunskill**, 481 U.S. 770, 777 (1987). For example, the **Hilton** Court acknowledged and concurred with the trial court's decision to consider the possibility of flight risk when deciding a stay of judgment pending a habeas corpus appeal. **See Hilton v. Braunskill**, 481 U.S. 770, 777 (1987).

The Trustee's administrative burden is rightly counted as irreparable harm. When exercising the power to stay a case, Court will weigh competing interests, including judicial economy and the administration of justice. **See Belize Social Development Ltd. v. Government of Belize**, 668 F.3d 724, 733 (D.C. Cir. 2012). If Trustee must begin adversary proceedings following the appeal, Trustee's resources will be unnecessarily constrained. Your Trustee cannot get back time he already spent.

If this Court's Order **[Doc 47]** is not stayed pending appeal, the Trustee's administrative burden will harm creditors and the public. As Trustee rightly notes, monthly filings are up. Any time your Trustee spends on an adversary proceeding recouping payments to creditors is time the Trustee would otherwise spend administering the general public's bankruptcy cases within the Western District of Oklahoma. Members of the public who file new bankruptcy cases in the western district of Oklahoma will receive less administrative attention, harming access to justice for debtors in Oklahoma. As Trustee rightly notes, there is no guarantee the Trustee will be able

to recoup any funds disbursed while the appeal is pending. Indeed, the prevailing creditors or the creditors benefiting from the appeal will lose out on funds they would receive absent the Trustee disbursing funds before the appeal is over.

Typically, the merits of an appeal receive the most weight on a discretionary stay analysis. **In re Stewart**, 604 B.R. 900, 905 (B.R. W.D. Okla. 2019). Trejo maintains his appeal is meritorious. However, even if Trejo's appeal is somehow not meritorious, this Court should consider whether relaxing the weight typically given to the merits of an appeal would change the outcome of granting a limited stay. When the three "harm" factors favor granting a preliminary injunction, the "probability of success requirement" is relaxed. **See Heideman v. South Salt Lake City**, 348 F.3d 1182, 1189 (10<sup>th</sup> Cir. App. 2003) (citing **Prairie Band of Potawatomi Indians v. Pierce**, 253 F.3d 1234, 1246, (10<sup>th</sup> Cir. App. 2001)). Irrespective of the merits of Trejo's appeal, which Trejo maintains is meritorious, the harm to your Trustee's administration, to creditors, and to the public if the Order **[Doc 47]** is not stayed outweighs any harm related to conducting the Order.

### **CONCLUSION**

Therefore, in light of the significant impacts the pending appeal will have on the Trustee's administration, prevailing or otherwise innocent creditors on appeal, and to the public, Trejo requests this Court issue an Order allowing Trustee to hold all disbursements under the Chapter 13 plan **[Doc 47 & Doc 31]** in abeyance until the pending appeal is concluded.

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**CERTIFICATE OF SERVICE**

I certify that on February 13, 2025, I electronically transmitted this document to the Court Clerk using the ECF System for filing. Based on the records currently on file, the Court Clerk will transmit a Notice of Electronic Filing to the following ECF registrants, including all parties listed on the attached mailing matrix prepared by the debtor:

**See attached mailing matrix.**

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/s/ Cody D. Kerns

I certify that on February 13, 2025, I also served this document by first-class mail the following, who are not registered participants of the ECF system:

Attn: Capital One Auto Finance, a division of Capital One, N.A. Department  
AIS Portfolio Services, LLC  
Acct. XXXXXXXXXXX0082  
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Crb/momnt  
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/s/ Cody D. Kerns

Label Matrix for local noticing  
1087-5  
Case 24-12446  
Western District of Oklahoma  
Oklahoma City  
Mon Dec 30 15:48:56 CST 2024

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Achieve Personal Loans  
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Aspire Credit Card  
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Mt Laurel NJ 08054-1210

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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Saint Cloud MN 56302-9617

Portfolio Recovery Associates, LLC  
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Norfolk VA 23541

Vive Financial  
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Jeffrey E. West  
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)FREEDOM MORTGAGE CORPORATION

(d)Destiny Card  
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Columbus GA 31902-3030

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Total 46